

From: Sheldrake, Beth
Sent: Wednesday, January 22, 2014 11:31 AM
To: Gervais, Gregory; Fonseca, Silvina; Schweiss, Jon; Rochlin, Kevin; Fiedler, Linda
Subject: final versions of FMC Independent Review "framework" and Argonne "Abstract"
Attachments: Letter to Chairman Small Attachment.pdf; Letter to Chairman Small from Perciasepe.pdf; ORA Abstract for Independent Review Final Draft August 13 2012.docx

All -

Just so we are all on the same page, here is the "Abstract" that went to Argonne and the "framework" sent to the Tribes from Perciasepe. For some reason, I am not finding a Word version of the "framework."

Beth

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Eastern Michaud Flats – FMC Operable Unit

Independent Review Abstract

Background:

The EPA is in the process of issuing an Interim Record of Decision Amendment for the FMC Operable Unit at the Eastern Michaud Flats Superfund site in Pocatello, Idaho. EPA, in its remedy decision process, conducted a review of technologies that could be implemented to address the elemental phosphorous in soil (the principal threat waste). Based on that review and using CERCLA's nine criteria, EPA determined that capping was the preferred approach. However, the Shoshone-Bannock Tribes, a major stakeholder, favor the permanent removal of and/or treatment of contaminants. The Tribes have expressed concerns regarding the previous review conducted on potential treatment technologies. To address the Tribes' concerns, EPA has agreed to commission an Independent Review of excavation and treatment technologies (ETT) for soils contaminated with elemental phosphorous to further inform the assessment of potential ETT.

Purpose:

The U.S. Environmental Protection Agency (EPA) is committed to working closely with the Shoshone-Bannock Tribes (Tribes) in framing and conducting this Independent Review of ETT for soil contaminated with elemental phosphorous. The EPA and the Tribes agree that such a review should be conducted by an independent, objective entity capable of assembling world-class expertise on the subject matter. The EPA believes, and the Tribes concur, that the Argonne National Laboratory (ANL) offers these attributes. The results of this unique effort will ultimately supplement the extensive evaluation of treatment technologies and will be added to the record for the final remedy decision related to the FMC Operable Unit.

The Review:

The Independent Review of ETT will be conducted in one or possibly two phases. Phase 1 is the subject of this abstract and will involve profiling possible ETT relative to the FMC OU. Phase 2 of this effort may be undertaken if the EPA, with input from the Tribes, determines that the results of Phase 1 merit additional evaluation. (note: The scope of Phase 2 has not yet been developed, however, it may include a preliminary design analysis, and identification of additional studies or evaluations related to implementability, effectiveness, costs, health and safety or other concerns. Funding for Phase 2 has not been secured by EPA, and conducting Phase 2, if needed, will be dependent on available resources. Phase 2 is not included within this current tasking.)

The scope of Phase 1 will cover and include, at a minimum, the following:

- Review Existing Information – Existing information regarding site-specific conditions, such as contaminant concentrations and locations will be provided to the review panel. No additional sampling will be commissioned or undertaken to support this review.

- **Extent of Review** – The review will be limited to identifying and profiling ETT for elemental phosphorous in soil (the principal threat waste) only. Other contaminants or media will not be evaluated unless it is determined that they impact the efficacy of an ETT.
- **Technologies** – The review will identify technologies (in-situ and ex-situ) from existing applied research, bench-scale, pilot and/or operational situations that are relevant to the conditions found at the FMC OU.
- **Applicability** – For those ETT identified and profiled, the review will evaluate their applicability to the conditions found at FMC throughout the OU or any sub areas of the FMC OU.
- **Efficacy and Feasibility**– The review will also profile the expected efficacy and feasibility of ETT identified and profiled, particularly in facilitating safe implementation given the site specific conditions at the FMC OU.
- **Risks** – The review will identify and describe the expected risks associated with implementation of those ETT identified and profiled.
- **Costs** – The review will provide cost estimates for each ETT identified and profiled. These estimates will include costs necessary to mitigate any risk(s) identified in the previous bullet.

Product: A detailed description of the review process and its results will be provided by the review panel to EPA in a draft report for review and comment followed by a final report. EPA will provide the draft report to the Shoshone Bannock Tribes for their review and comment.

Schedule: The review process through the submittal of the draft report may take up to about six months following the signing of the Task Order by the EPA Project Officer. The final report will be delivered about 60 days after final EPA comment and approval by the EPA Project Officer. It is expected that the project will be completed within 12 months (1 calendar year) from the date of approval of the Task Order by the EPA Project Officer. (The Task Order will be reviewed and approved by EPA and DOE prior to EPA Project Officer approval.)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 10 2012

DEPUTY ADMINISTRATOR

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

The Honorable Nathan Small
Chairman
Fort Hall Business Council
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203

Dear Chairman Small:

I would like to follow up on our May 16, 2012, meeting regarding the cleanup of the FMC Operable Unit at the Eastern Michaud Flats Superfund in Pocatello, Idaho. We are grateful for the special effort you and your staff made in traveling to Washington, D.C., to talk with us. We also greatly appreciated the opportunity to hear firsthand the tribes' major concerns about this important cleanup.

Through both meetings and correspondence, the tribes' views on this cleanup have been clearly articulated to the U.S. Environmental Protection Agency. We understand that a sacred portion of your ancestral home has been adversely impacted and acknowledge your longstanding interest in returning this land to pre-industrial condition.

The EPA believes it is important to proceed with issuance of an interim record of decision amendment for the FMC Operable Unit that selects capping of contaminated soil and groundwater extraction and treatment. This interim action is necessary to stop the infiltration of contaminants to groundwater and their subsequent migration to adjoining springs and the Portneuf River.

The EPA remains committed to working closely with the tribes in framing and conducting an independent review of excavation and treatment technologies for soil contaminated with elemental phosphorous at the FMC Operable Unit. The results of this unique effort will ultimately supplement the extensive evaluation of treatment technologies reflected in the administrative record for the interim record of decision amendment for the FMC Operable Unit.

At the close of our meeting, I suggested that the EPA frame the path forward for the independent review and describe how its product would be integrated with the regular Superfund process. I have asked Regional Administrator Dennis McLerran and his staff to take the lead on this effort. Please find attached a proposal they developed for commissioning the independent review. We invite your review of and engagement with this draft document. Please direct your comments to Jon Schweiss who is, as you know, a senior advisor to Regional Administrator McLerran and is assigned to manage this independent review.

Following I briefly describe how this independent review will be integrated into the regular Superfund process. The EPA will consider the product of the independent review when selecting the final remedy for the FMC Operable Unit. This includes considering the independent review findings when determining whether to implement treatability or other types of studies for the FMC Operable Unit before selecting the final remedy and placing the independent review report in the administrative record for the final remedy for the FMC Operable Unit. Any decision regarding future studies, including treatability studies, must necessarily be made in accordance with the Comprehensive Environmental Response Compensation and Liability Act, the National Oil and Hazardous Substances Pollution Contingency Plan, and relevant EPA CERCLA guidance.

Your letter also raised other concerns related to soil gas, the status of the tribes' soil-cleanup standards as applicable and relevant or appropriate requirements for this interim cleanup decision, and using a tribal risk scenario to assess risks from the site. It is my understanding that the tribes also raised these concerns in formal comments on the EPA's proposed plan for the FMC Operable Unit and that those concerns were addressed in the draft response to comments provided in advance of the recent government to government consultation. The response to comments will be finalized with the issuance of the interim record of decision amendment.

Again, it was a pleasure and an honor to meet with you and your staff. I look forward to reports from Regional Administrator McLerran both about his future interactions with you and the progress on this important matter.

Sincerely,



Bob Perciasepe

Attachment

**EPA'S DRAFT PROPOSAL TO COMMISSION
AN INDEPENDENT REVIEW OF EXCAVATION/TREATMENT TECHNOLOGIES
FOR THE FMC OPERABLE UNIT OF THE EASTERN MICHAUD SUPERFUND SITE**

Context

The EPA will be issuing an Interim Record of Decision for the FMC Operable Unit (FMC OU) selecting capping of contaminated soil and groundwater extraction and treatment based on the existing Administrative Record. The Shoshone-Bannock Tribes favor the permanent removal and/or treatment of subject contaminants. There are a number of dimensions related to both EPA's decision-making on this matter and the Tribes' response to it. These are well-documented in the public record. The balance of what follows is intended to review only the narrower subject of (ETT) for soils contaminated with elemental phosphorous, the principal threat waste at the FMC OU.

The EPA is committed to working closely with the Tribes in framing and conducting an Independent Review of excavation and treatment technologies for soil contaminated with elemental phosphorous at the FMC OU. The results of this unique effort will ultimately supplement the extensive evaluation of treatment technologies and will be added to the record for the final remedy decision related to the FMC Operable Unit.

The Independent Review of ETT will be composed of one or two phases. Phase 1 will involve profiling possible ETT relative to the FMC OU. The EPA will both fund and administratively facilitate the Phase 1 review, and support the Tribes' full and meaningful participation in the effort by providing them access to technical assistance services. Phase 2 is contingent on the results of Phase 1. Its scope is intended to provide information to further inform an evaluation of one or more ETT according to the nine criteria provided in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The Phase 2 evaluation could include, but is not limited to, a preliminary design analysis outlining major design features and information needs, including identification of additional studies or evaluations, such as a treatability study, related to implementability, effectiveness, costs, health and safety or other concerns.

Phase 1: The Technology Review

The following outlines the proposed scope, major processes, products and schedule of Phase 1 of this review.

Scope – The scope of the work undertaken by the independent, expert review entity (Review Entity) covers several areas which EPA plans to generally frame as follows:

- **Site-Specific Information** – Existing information on the contamination found at the FMC OU will be provided to and actively considered by the Review Entity. Ready access to all such information will be furnished to the Review Entity. No additional site investigation will be commissioned or undertaken in support of this review. However, the Review Entity may identify any substantial information gaps discerned over the course of its work and discuss their implications on the Review.
- **Target Contaminant** – The Review Entity will focus on ETT for the designated principle threat waste at the FMC OU – elemental phosphorous (and its byproducts). Other contaminants already identified at the FMC OU will not be evaluated. However, the Review Entity may identify the extent to which these other contaminants are determined to be either mitigated or exacerbated by or impact the efficacy of subject ETT.
- **Types of ETT** – The Review Entity will profile existing applied research, bench-scale, pilot and/or operational ETT relevant to conditions found at the FMC OU. The ETT under consideration may include both in-situ (those not requiring excavation) and ex-situ treatment technologies. The Review Entity will not actively consider theoretical, conceptual and/or basic research ETT.
- **Applicability of ETT** – The Review Entity will profile the applicability of ETT identified in "Types of ETT" in addressing contamination at the FMC OU. Specifically, the Review Entity may identify and evaluate ETT that could potentially address elemental phosphorus contamination both across the FMC OU and in any highly contaminated or environmentally significant sub-areas of the FMC OU.
- **Efficacy of ETT** – The Review Entity will profile the expected efficacy of candidate ETT for facilitating safe excavation and/or eliminating or reducing physical hazards and toxicity of contamination at the FMC OU (in its entirety or in sub-areas of interest described above).
- **Feasibility of ETT** – The Review Entity will profile the expected feasibility of implementing candidate ETT at the FMC OU. This profile will include physical and logistical dimensions of implementation, including duration to implement.

- **Health & Safety** - The Review Entity will profile the nature of expected health and safety risks (to on-site workers and the public) related to candidate ETT and their implementation. This profile will be as quantitative as possible.
- **Cost** - The Review Entity will profile the costs related to candidate ETT and their implementation across the FMC OU and in any highly contaminated or environmentally significant sub-areas of the FMC OU identified jointly by the Tribes and EPA.

Major Process Features – The effort will be accomplished employing the following major process features:

- **Decision-Making** – The Regional Administrator of USEPA Region 10 will work directly with the Chairman of the Shoshone-Bannock Tribes to timely resolve any disputes regarding this review, including its processes, substance and products. By law, EPA must retain the final responsibility for directing and implementing the contract or other similar mechanism for this independent review.
- **Framing the Work of the Review Entity** – EPA will work with the Tribes to jointly frame the detailed work to be undertaken by the Review Entity consistent with the provisions described in the foregoing “Scope” section. The EPA is seeking funding to support the Tribes’ full and meaningful participation in this and other aspects of the effort (i.e., draft report review) by providing access to services via the Technical Assistance Support to Communities contract or other similar mechanism. EPA expects that this framing work will be accomplished in weekly conference calls until completion.
- **Selection of Review Entity** – The EPA will engage a qualified expert entity to perform the Phase 1 and, if appropriate, Phase 2 of the review. This Review Entity will self identify the members of the review team, but input on known experts in the field may be provided by the Tribes and the EPA. EPA will work with the Tribes to jointly select and activate the Review Entity via a four-step process:
 - EPA will work with the Tribes to jointly develop the critical competencies of and selection criteria for the independent expert review entity. EPA expects that this work will be accomplished in weekly conference calls until completion.
 - EPA will propose both the means available for funding the review entity and the entities available to the EPA, and then work with the Tribes to jointly develop a short list of candidate funding mechanisms and specific candidate entities for subsequent joint evaluation. EPA expects that this work will be accomplished in weekly conference calls until completion.
 - EPA will work with the Tribes to jointly select the Review Entity. EPA expects that this work will be accomplished in weekly conference calls until completion.
 - EPA will endeavor to establish the enabling funding agreement with the selected Review Entity and the effort will commence within three months of Review Entity selection.
- **Interactions with Review Entity** – It is critical that the Review Entity be able to conduct its technical review work in a truly independent fashion, free from any and all outside interference or influence. From the time the Review Entity commences its work through to the delivery of its draft product, EPA agrees to allow this process to proceed independently and to avoid engaging in separate conversations with the Review Entity for purposes of influencing the outcome of this work. However, EPA will retain and fulfill its legal responsibilities for directing and implementing the contract or other similar mechanism for this independent review.
- **Product Review** – Within four (4) months after its work commences, the Review Entity will prepare a draft report of its findings based on the items outlined in the *Scope* section above for review by the Tribes and EPA. The Review Entity will include a section in the report summarizing its findings regarding the technologies considered by the Review Entity and the factors listed above in scope of the review (i.e. target contaminants, efficacy, feasibility, health and safety and cost). The review of this draft report will be confined to clarifications of report content. The input of altogether new content or information to the report by the Tribes or EPA is not allowed. It is EPA’s goal that within one (1) month following receipt of the draft report, the Tribes and the EPA will prepare letters transmitting their request for needed clarifications. Within one (1) month following its receipt of the clarifications review letter, the Review Entity will subsequently revise and/or augment the draft report with the clarifications sought and issue a final report.

Products – This effort will yield a draft report, followed by a final report, as described below:

- **Draft Report** - The Review Entity will prepare a draft report reflecting content consistent with the foregoing *Scope* section and subject to the review parameters outlined in the foregoing *Process-Product Review* section. The draft report will also include detailed descriptions of the experts, methodologies, and reference materials involved in the review and the production of its findings.
- **Final Report** - The Review Entity issues final report, incorporating clarifications as appropriate.

Schedule – This effort will proceed as follows:

- Month 1:
 - R10 is seeking to activate a Technical Assistance Support to Communities (TASC) contract or similar funding vehicle to provide the Tribes with access to specialized technical assistance in accordance with its legal and funding restrictions and requirements
 - Commence Scoping/Framing effort (note: may have to await TASC or other similar process for Tribal technical assistance, R10 convenes weekly conference calls)
 - Develop critical competencies profile and selection criteria for independent expert review entity (note: may have await TASC or other similar process, R10 convenes weekly conference calls)
 - Develop short list of candidate independent expert review entities and evaluate candidates (note: may have await TASC process or other similar process, R10 convenes weekly conference calls)
- Months 2-3:
 - Technical assistance contractor directly engages with Tribes
 - Complete Scoping/Framing effort (R10 convenes weekly conference calls)
 - Finalize critical competencies profile and selection criteria for independent expert review entity (R10 convenes weekly conference calls as needed)
 - Finalize short list of candidate independent expert review entities and evaluate candidates (R10 convenes weekly conference calls as needed)
 - Select independent expert Review Entity
- Month 4:
 - Establish Review Entity funding mechanism
 - Review Entity commences work
- Month 8:
 - Review Entity issues draft report
- Month 9:
 - Tribes & EPA transmit comments on draft report
- Month 10:
 - Review Entity issues final report

Phase 2: Further Evaluation of Promising ETT

The following describes the major elements of a possible Phase 2 of the independent review.

Decision to Proceed – Phase 2 of this effort may be undertaken if the EPA, with input from the Tribes, determines that the results of Phase 1 merit additional evaluation. Funding for Phase 2 has not been secured by EPA and is necessarily dependent on available resources. In brief, Phase 2 may be launched if Phase 1 either identifies new promising ETT not previously profiled in the RI/FS or related efforts, or divulges new information related to previously profiled ETT that supports the need for further evaluation. The EPA will consider the information contained in the final report produced in Phase 1 in making this decision. Its scope is intended to provide information to inform an evaluation of the ETT according to the nine criteria provided in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This evaluation could include a preliminary design analysis outlining major design features and information needs necessary for implementation, or identification of additional studies or evaluations, such as a treatability study, to determine implementability or effectiveness. Again, at present, EPA has not committed any funds for Phase 2.

Scope - The goal of Phase 2 is to broadly frame the scope and design of a possible future study at the FMC OU employing the ETT jointly selected by the Tribes and EPA at the conclusion of Phase 1. Achieving this goal involves the first effort, and if needed, the second effort described below:

- The Review Entity may be tasked with conducting an in-depth assessment of the candidate ETT (i.e., excavation and treatment technologies) relative to each of the elements detailed in the “Scope” section of Phase 1. This assessment may include a more rigorous analysis of any significant information gaps, technological challenges, projected uncertainties, costs and other issues relevant to the CERCLA nine criteria.
- The Review Entity may be tasked with framing the nominal scope and design of a possible future treatability study at the FMC-OU employing the ETT jointly selected by the Tribes and EPA. This effort may include, but is not limited to, a discussion of the conceptual integration of excavation and treatment technologies, recommended scale, critical physical and process design features, health and safety considerations, performance criteria, quality assurance and other features that would significantly enhance and expedite the design of a possible future treatability study.

Major Process Features of a Potential Second Phase – The effort will be accomplished employing the following major process features:

- **Decision to Proceed** – (see foregoing)
- **Decision-Making** – (see related Phase 1 discussion)
- **Refining Scope** – If EPA commissions Phase 2 work, EPA will work with the Tribe to jointly frame the detailed Phase 2 work to be undertaken by the Review Entity consistent with the provisions described in the foregoing “Scope” section. EPA expects that this framing work will be accomplished in weekly conference calls until completion.
- **Interactions with Review Entity** – (see related Phase 1 discussion)
- **Product Review** – Within two (2) months after its work commences, the Review Entity will prepare a draft report of its findings for review by the Tribes and EPA. The review of this draft report will be confined to clarifications of report content. The input of altogether new content or information to the report by the Tribes or EPA is not allowed. Within one (1) month following receipt of the draft report, the Tribes and the EPA will prepare letters transmitting their request for needed clarifications. Within one (1) month following its receipt of the clarifications review letter, the Review Entity will subsequently revise and/or augment the draft report with the clarifications sought and issue a final report.

Products – This effort will yield a draft report, followed by a final report employing process similar to that used for Phase 1, as described below:

- **Draft Report** - The Review Entity will prepare a draft report reflecting content consistent with the foregoing “Scope” section and subject to the review parameters outlined in the foregoing “Process - Product Review” section. The draft report will also include detailed descriptions of the experts, methodologies, and reference materials related to the review and the production of its findings. The draft report will not include any additional judgments, recommendations or remarks.
- **Final Report** - The Review Entity issues final report, incorporating clarifications as appropriate. The final report will not include any additional judgments, recommendations or remarks.

Schedule – This effort may proceed as follows:

- Month 1:
 - Commence Scoping/Framing Effort for Phase 2
- Month 2:
 - Complete Scoping/Framing Effort (R10 convenes weekly conference calls)
- Month 3:
 - Review Entity Commences Work on Phase 2
- Month 5:
 - Review Entity Issues Draft Report
- Month 6:
 - Tribes & EPA Transmit Reviews of Draft Report
- Month 7:
 - Review Entity Issues Final Report